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MAR 31 2008

In re Application of : **OFFICE OF PETITIONS**
Flick :
Application No. 10/085,403 : DECISION ON PETITION
Filed: February 28, 2002 :
Attorney Docket No.: 58122 :
:

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed November 7, 2007, to revive the above-identified application.

The petition under 37 CFR 1.137(b) is GRANTED.

The request for refund is DISMISSED.

This application became abandoned April 21, 2007 for failure to timely submit an appeal brief within the time period set for said submission in response to the Notice of Panel Decision from Pre-Appeal Brief, mailed March 16, 2007. Notice of Abandonment was mailed October 5, 2007.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied: (1) the reply in the form of an appeal brief, (2) the required petition fee, and (3) a proper statement of unintentional delay.

As to petitioner's contention that the Notice of Panel Decision from Pre-Appeal Brief, mailed March 16, 2007, was inaccurate and incomplete, petitioner is reminded that the preappeal conference program is a pilot program, as stated in § 8 of the Official Gazette Notice 1296 O.G. 67 (OG Notice). The decision of the panel is not petitionable. Applicant's petition would require a determination of the propriety of the decision and not merely a procedural matter and as such, this issue is not petitionable.

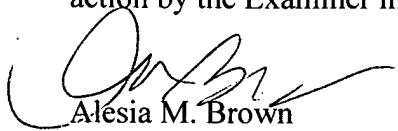
There are four numbered boxes (numbered 1 - 4) on the form titled "Notice of Panel Decision From Pre-Appeal Brief Review". Petitioner's complaint is that box number 2 was not checked. In order to determine the issue here it would be necessary to determine if any of the other boxes should have been checked to the exclusion of box 2 and thus this would require a determination of the propriety of the Panel Decision in contravention to the OG Notice. The response that is appropriate after the filing of a Notice of Appeal is the filing of a Brief on Appeal. The appeal

brief was due on April 16, 2007, subject to extensions of time under 37 CFR 1.136(a). An appeal brief was not filed within the periods prescribed by the rules; therefore, the application was properly abandoned.

The petition fee will not be refund as payment of the petition fee is a pre-requisite prior to treatment on the merits of any petition submitted pursuant to 37 CFR 1.137.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3205.

This application is being referred to Technology Center Group Art Unit 3629 for appropriate action by the Examiner in the normal course of business on the reply received November 7, 2007.



Allesia M. Brown
Petitions Attorney
Office of Petitions